IN THE

Supreme Court of the United States

October Term, 1945.

No. 1097

JOHN KNUDSEN,

Petitioner and Appellee Below,

vs.

ARTHUR STEGMAN,

Respondent and Appellant Below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

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To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

Summary Statement of the Matter Involved.

The respondent herein filed in the district court a petition in involuntary bankruptcy against this petitioner alleging himself to be a judgment creditor by reason of a judgment secured in cause number 432034 of the Los Angeles county superior court [R. 3]. This petitioner filed an amended answer denying that respondent is a

creditor [R. 8] and in a first affirmative defense alleging this petitioner's discharge in a former bankruptcy proceeding in said district court and that respondent's said default judgment in said cause number 432034 was discharged in said bankruptcy. He alleged that said default judgment was a judgment upon another default judgment in a cause numbered 363482 in said superior court, which suit was brought by one Roselle Brown upon a promissory note and for money loaned and that respondent was an assignee for value of said original judgment [R. 10]. He also filed a cross-petition praying that respondent upon the aforesaid facts be enjoined from further prosecuting either of said judgments [R. 14]. In this cross-petition he directly attacked the validity of two subsequent orders, claimed by respondent to be an adjudication of fraud. [R. 17 and 22].

The district court gave judgment granting this petitioner the relief prayed for in his cross-petition [R. 210]. It made extensive findings of fact and conclusions of law [R. 193]. It held that respondent's said judgment was discharged in said former bankruptcy. It found that said default judgment in contract, and all of the proceedings relating thereto, contain no reference to fraud, and that such judgment constitutes a waiver of fraud. It determined that no court has the power to go beyond the record of said judgment [R. 205]. It expressly found and determined that said two subsequent orders void for the reason that said original default judgment is *res judicata* [R. 199, 204 and 207].

The district court determined in addition that by reason of extrinsic mistakes of fact, and other facts found, there exist special and unusual circumstances of injustice

and oppression against this petitioner such as to impel the granting of equitable relief in disregarding said subsequent orders *even if it might be held that such subsequent orders are res judicata* [R. 204, 206 and 207]. It also expressly found and determined that the subsequent orders, upon their face, and also in view of certain facts expressly found [R. 199, 203], are not in fact *res judicata* for the further reasons they are not judgments upon the merits and that each constitutes a mere refusal of the court to pass upon the merits [R. 206, 207] and that they are void also in that they constitute an attempt to take one of this petitioner's most precious liberties, to-wit: his good name and reputation in a summary manner and without due process of law [R. 204].

The circuit court ignored all of the findings of fact upon which the district court granted equitable relief. It found none to be unsupported by the evidence, or itself made new findings. It nevertheless reversed the district court without ordering a new trial [R. 288].

Jurisdiction.

1. The jurisdiction of this court is invoked under section 240(a) of the Judicial Code (28 U. S. C. 347). Judgment was entered in this case by the United States Circuit Court of Appeals on January 9, 1946 [R. 289]. A petition fo rehearing was filed February 6, 1946, and an order denying said petition was made and filed February 12, 1946 [R. 290].

The Question Presented.

1. A default judgment upon a promissory note and for money loaned constitutes a waiver of fraud and no court has the power to go beyond the record of such judgment and find it based on fraud and not dischargeable in bankruptcy.

2. Where the district court determined that by reason of the facts found there exist unusual circumstances of injustice and oppression such as to impel the granting of equitable relief, the circuit court cannot reverse the district court in complete disregard of the findings of fact upon which such equitable relief was based, and without determining any of such findings to be unsupported by the evidence.

3. In such circumstances, in any event, the circuit court cannot reverse the district court without ordering a new trial.

Reasons for Granting the Writ.

(1) In going beyond the record of a default judgment upon a promissory note and holding that two subsequent orders, directly attacked, are each *res judicata,* the circuit court of appeals has decided a federal question in a way probably in conflict with applicable decisions of this court, to-wit: *Tindle v. Birkett,* 205 U. S. 183, 51 L. Ed. 762, 27 S. Ct. 473, 18 Am. B. R. 121; *Cromwell v. Sac. County,* 94 U. S. 351, 24 L. Ed. 195; and other decisions, holding in effect that a judgment on a contract constitutes a waiver of fraud and is *res judicata* and that no court has the power to subsequently readjudicate such a judgment.

(2) Such holding is also in conflict with a decision of the circuit court of appeals of the eighth circuit, to-wit: *Hagardine McKittrick Co. v. Hudson* (CCA 8th, 1903), 111 Fed. 361, 6 Am. B. R. 657, similarly holding.

(3) Notwithstanding the aforesaid decisions there seems to be a general conflict in the local courts upon this question. Nor does this court, or any circuit court, appear to have directly decided the question under the existing bankruptcy law. The question is a federal question of general importance because it affects a large number of bankrupt persons under the present bankruptcy practice. It is a question which ought to be brought up to date and settled by this court.

(4) In depriving petitioner of the equitable relief granted by the district court, without finding unsupported any of the findings of fact upon which such equitable relief was based, and even without ordering a new trial, the circuit court has decided a federal question in conflict with an applicable decision of this court, to-wit: *Commissioner of Internal Revenue v. Scottish American Investment Co.*, 323 U. S. 119, 124, 65 S. Ct. 169, 89 L. Ed. 97, and other decisions including decisions of other circuit courts, holding that a court of review has no power to disregard such findings.

(5) In acting as aforesaid the circuit court has so far departed from the usual course of judicial proceedings as to call for this court's power of supervision.

Wherefore your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of

the proceedings of said court, numbered 11050, and had in the case numbered and entitled on its docket number 41581 P. H., in the Matter of John Knudsen, Bankrupt, in the District Court of the United States, in the Southern District of California, Central Division, to the end that this case may be reviewed and determined by this court as provided by the statutes of the United States; and that the judgment herein of said circuit court be reversed and the judgment of said district court be affirmed by this court, and for such further relief as to this court may seem proper.

Dated this 2nd day of April, 1946.

GEORGE ACRET,

Attorney for Petitioner and Appellee Below.